



# SC CDBG Technical Workshop 2010

## **Conducting Environmental Reviews**



South Carolina  
Commerce

# Environmental Review

- ❖ Environmental review means completing a prescribed process of assessing a CDBG-funded activity to determine its impact on the environment and the environment's impact on the activity
- ❖ Key resources:
  - Ch. 2 of SC CDBG Implementation Manual (incl. att.)
  - <http://portal.hud.gov/portal/page/portal/HUD/topics/environment>
  - 24 CFR Part 58 & NEPA

# Environmental Terms

- ❖ Part 58 – HUD regulation governing environmental reviews for CDBG
- ❖ NEPA – National Environmental Policy Act
- ❖ RE – Responsible Entity – Under state CDBG, unit of local government is responsible entity
  - CO – Certifying officer
  - EO – Environmental officer
- ❖ ERR – Environmental review record – official file containing all review documentation
- ❖ EA – Environmental assessment
- ❖ NOIRROF – Notice of intent to request release of funds
- ❖ FONSI – Finding of no significant impact

# Roles and Responsibilities

- ❖ The recipient designates two responsible parties:
  - 1) Certifying Officer (CO): “Responsible Federal official” certifying that all environmental requirements have been followed
    - Chief elected/executive official or designee
  - 2) Environmental Officer (EO): Completes environmental review requirements (narrative, maps, letters to agencies)
    - Grant Administrator or consulting engineer

# Roles and Responsibilities Cont.

- ❖ Each CDBG recipient must prepare & maintain written record of environmental review called **ERR**
  - Description of project & activities
    - Includes exempt activities (admin)
  - Forms, such as Statutory Checklist & Modified Format II Environmental Assessment
  - Written determinations & mitigating actions
  - Notices & public comments



# Limits on Activities Prior to Clearance

- ❖ Neither a recipient nor any participant may commit or expend **CDBG** funds prior to receiving **environmental clearance** **IF** the activity would have an adverse environmental impact or limit the choice of reasonable alternatives unless the activity is exempt or categorically excluded not subject to § 58.5
  - “Participant” includes public or private nonprofit or for-profit entities or their contractors
  - **Prohibited commitments/expenditures include acquisition & construction**



# Limits on Activities Prior to Clearance Cont.

- ❖ Recipients must ensure actions are not taken by subrecipients or participants prior to receiving environmental clearance
- ❖ Commitment does not include (and therefore is OK to make...):
  - A statement of conditional funding or
  - A non-legally binding agreement

# Limits on Activities Prior to Clearance Cont.

- ❖ For land acquisition projects, an option agreement (to purchase land) is allowable prior to **environmental clearance** only when:
  - It is subject to a responsible entity determination of environmental desirability  
and
  - It is of a nominal amount



# Levels of Review

- ❖ Determine the classification of the activity:
  - Exempt
  - Categorically Excluded (“Subject To” or “Not Subject To”)
  - Requires Environmental Assessment (EA) OR
  - Requires Environmental Impact Statement (EIS)
- ❖ If more than one activity or classification, go with most stringent

# Examples of Activities & Levels of Review

<b><i>Activity</i></b>	<b><i>Classification</i></b>
Acquisition/Disposition	Categorically Excluded Subject to Sec. 58.5
Clearance (Demolition)	Categorically Excluded Subject to Sec. 58.5 or EA
Water and Sewer Improvements	Categorically Excluded Subject to Sec. 58.5 or FA
Supplemental Assistance to a previously approved project	Categorical Excluded Not Subject to Sec. 58.5
Flood and Drainage Facilities Improvements	Categorically Excluded Subject to Sec. 58.5 or EA
Street Improvements	Categorically Excluded Subject to Sec. 58.5 or EA
Community Center/Facility: Rehabilitation	Categorically Excluded Subject to Sec. 58.5
Construction	EA

# Levels of Review Cont.

<b>Activity</b>	<b>Classification</b>
Parks, playground and other Recreational Facilities--Improvements	Categorically Excluded Subject to Sec. 58.5 or EA
Neighborhood facilities: Rehabilitation	Categorically Excluded Subject to Sec. 58.5 or EA
Construction	EA
Fire protection Facilities: Rehabilitation	Categorically Excluded Subject to Sec. 58.5 or EA
Construction	EA
Parking facilities: Rehabilitation	Categorically Excluded Subject to Sec. 58.5 or EA
Construction	EA
Public utilities, other than Water or Sewer Facilities--Improvements	EA

# Categorically Excluded 'Subject To' Activities

- ❖ Acquisition, improvement, or rehabilitation of public facilities other than buildings (less than 20% increase in capacity)
- ❖ Removal of material and architectural barriers
- ❖ Rehab & improvement of single family (1 to 4 unit) dwellings
- ❖ Rehab & improvement of multifamily dwellings if unit density increase no more than 20%, does not change to non-residential use & the est. cost of rehab is less than 75% of replacement cost



# Categorically Excluded 'Subject To' Activities

- ❖ An individual action on 1 to 4 dwelling units where there is a max of 4 units on any 1 site
- ❖ An individual action on 5 or more housing units developed on scattered sites when sites are more than 2,000 feet apart & there are no more than 4 units on any 1 site
- ❖ Acquisition (incl. leasing) or disposition of an existing structure provided it's for the same use





# CE Subject to – What steps do you take?

- Complete the name & project description
- **Research and document the site conditions**
- Send detailed project info. (maps, etc) to relevant agencies (see Agency Contact List) & request written **confirmation of** determination
- Complete **statutory** checklist indicating status & source documentation for each compliance area
- Make determination of exempt, categorically excluded subject to or environmental assessment
- Sign (preparer & RE CO)



# STATUTORY WORKSHEET

## 24 CFR §58.5 STATUTES, EXECUTIVE ORDERS & REGULATIONS

Use this worksheet only for projects which are Categorically Excluded per 24 CFR Section 58.35(a).

**PROJECT NAME and DESCRIPTION** - Include all contemplated actions which logically are either geographically or functionally part of the project: \_\_\_\_\_

This project is determined to be **Categorically Excluded** according to: [Cite section(s)] \_\_\_\_\_

**DIRECTIONS** - Write "A" in the Status Column when the project, by its nature, does not affect the resources under consideration; OR write "B" if the project triggers formal compliance consultation procedures with the oversight agency, or requires mitigation (see Statutory Worksheet Instructions). Compliance documentation must contain verifiable source documents and relevant base data.

Compliance Factors:		
Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5	A/B	Compliance Documentation
<b>Historic Preservation</b> [36 CFR Part 800]		
<b>Floodplain Management</b> [24 CFR 55, Executive Order 11988]		
<b>Wetland Protection</b> [Executive Order 11990]		
<b>Coastal Zone Management Act</b> [Sections 307I and (d)]		
<b>Sole Source Aquifers</b> [40 CFR 149]		
<b>Endangered Species Act</b> [50 CFR 402]		
<b>Wild and Scenic Rivers Act</b> [Sections 7(b), and (c)]		
<b>Clean Air Act</b> [Sections 176(c) and (d)]		
<b>Farmland Protection Policy Act</b> [7 CFR 658]		
<b>Noise Abatement and Control</b> [24 CFR 51B]		
<b>Explosive and Flammable Operations</b> [24 CFR 51C]		
<b>Airport Clear Zones and Accident Potential Zones</b> [24 CFR 51D]		
<b>Toxic Chemicals and Radioactive Materials</b> [24 CFR 58.5(i)(ii)]		
<b>Environmental Justice</b> [Executive Order 12898]		
<b>Energy (Energy Star Product Utilization)</b>		

### DETERMINATION:

- ( ) This project converts to Exempt, per Section 58.34(a)(12), because it does not require any mitigation for compliance with any listed statutes or authorities, nor requires any formal permit or license (Status "A" has been determined in the status column for all authorities); **Funds may be obligated** for this (now) EXEMPT project; OR
- ( ) This project cannot convert to Exempt because one or more statutes/authorities require consultation or mitigation. Complete consultation/mitigation requirements, publish NOI/RROF, submit proof and certification, and applicable supporting material to Grants Administration per Section 58.70 and 58.71 before obligating funds; OR
- ( ) The unusual circumstances of this project may result in a significant environmental impact. This project requires preparation of an Environmental Assessment (EA). Prepare the EA according to 24 CFR Part 58 Subpart E.

Preparer Signature	Preparer Name and Title (please print)	Date
Responsible Entity Certifying Official Signature	Name and Title (please print)	Date

For State Use Only	Reviewed	Date
Compliance Specialist		



# Statutory Worksheet Project Description

## ❖ First, complete the project name & description

- Include all contemplated actions that logically are either geographically or functionally part of the project
- Must be complete, detailed & accurate
- Include maps and site plans
- Helpful to include funding source or agency



# Statutory Worksheet Source Documentation

- ❖ Research and document site conditions
  - Conduct site observations of existing conditions
  - Do analysis of online maps and resources
  - Consult local sources and information
  - Compile source documentation
- ❖ Make preliminary determinations
- ❖ Contact agencies for confirmation of preliminary determinations



# Historic Preservation

## [36 CFR Part 800]

- **Requirement**: Recipients require to comply with 36 CFR Part 800 (Section 106) historic review requirements
  - Commerce entered into agreement with SHPO that lists what types of activities are excluded from SHPO review
  - However, any activity (even those on the excluded list) that might have potential impact on historic properties/archaeological remains require SHPO/THPO consultation
  - In no case is vinyl siding/vinyl clad products allowed as replacements on properties 50+ years old without SHPO's OK



# Historic Preservation [36 CFR Part 800]

## ❖ Process:

- Prepare the **Section 106 Project Review Form (#5a)**
  - Describe the undertaking & the area of potential impact
  - Search the Cultural Resource Information System showing area OR attach topo map with boundaries of area noted
  - For rehab activities, include photos of front & rear elevations & show on map



### SOUTH CAROLINA DEPARTMENT OF ARCHIVES & HISTORY STATE HISTORIC PRESERVATION OFFICE SECTION 106 PROJECT REVIEW FORM

*Section 106 of the National Historic Preservation Act requires the South Carolina State Historic Preservation Office to review all projects that are federally funded, licensed, or assisted. All information must be completed before our review can begin. Please allow thirty (30) days from receipt for review of a project.*

*The SHPO is only one consulting party under Section 106. Refer to 36 CFR 800.2 for information about other participants who are entitled to comment on the Section 106 Process, including Native American tribes, interested parties, and the public. Consultation with the SHPO is NOT a substitution for consultation with appropriate Native American tribes.*

**STOP** This form should not be completed when submitting an FCC Form 620 or 621.

#### THIS IS:

☐ A NEW PROJECT *(Complete all pages of form)*

☐ ADDITIONAL INFORMATION REGARDING PREVIOUS SUBMISSION

*(Complete first page of form ONLY)*

SHPO Project No: \_\_\_\_\_

#### STATUS OF PROJECT:

☐ FEDERAL UNDERTAKING ANTICIPATED ☐ FEDERAL UNDERTAKING (as defined at 36 CFR 800.16(y))

#### GENERAL INFORMATION

1. Project Name: \_\_\_\_\_

2. City: \_\_\_\_\_

3. County: \_\_\_\_\_

4. Federal Agency (providing funding, license, permit, or assistance): \_\_\_\_\_

Agency Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

5. Federal Agency Authorized Delegate (often applicant): \_\_\_\_\_

Delegate Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

6. Consultant/Agent for Delegate (if applicable): \_\_\_\_\_

Consultant Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

# Historic Preservation [36 CFR Part 800]

## ❖ Process:

- Submit to SHPO
- SHPO has 30 days to respond

## ❖ Status & Documentation:

- A = No Historic Properties Affected
- B = No Historic Properties Adversely Affected (incl. future actions to avoid/minimize/mitigate adverse effects) OR...Historic Properties are Adversely Affected (consultation does not end until project modified to have no adverse effect)

# Historic Preservation [36 CFR Part 800]

- ❖ All ground disturbing activities also require documentation of consultation with Tribal Historic Preservation Officer (THPO)
  - Catawba Indian Nation
  - Eastern Band of Cherokee Indians (certain counties)
- ❖ Need copy of letter & response from THPO in ERR

# Floodplain Management

## [24 CFR 55, Exec. Order 11988]

### ❖ Requirement:

- Comply with above referenced laws if project is located in or will impact the floodplain

### ❖ Process:

- Determine if in or impact on floodplains
  - Use Flood Insurance Rate Maps (FIRMs) or other acceptable sources (see manual)
  - For site specific determinations, use data from the US Army Corps of Engineers
- If in/impact on floodplain, 8-step process must be followed



# Floodplain Management

## [24 CFR 55, Exec. Order 11988]

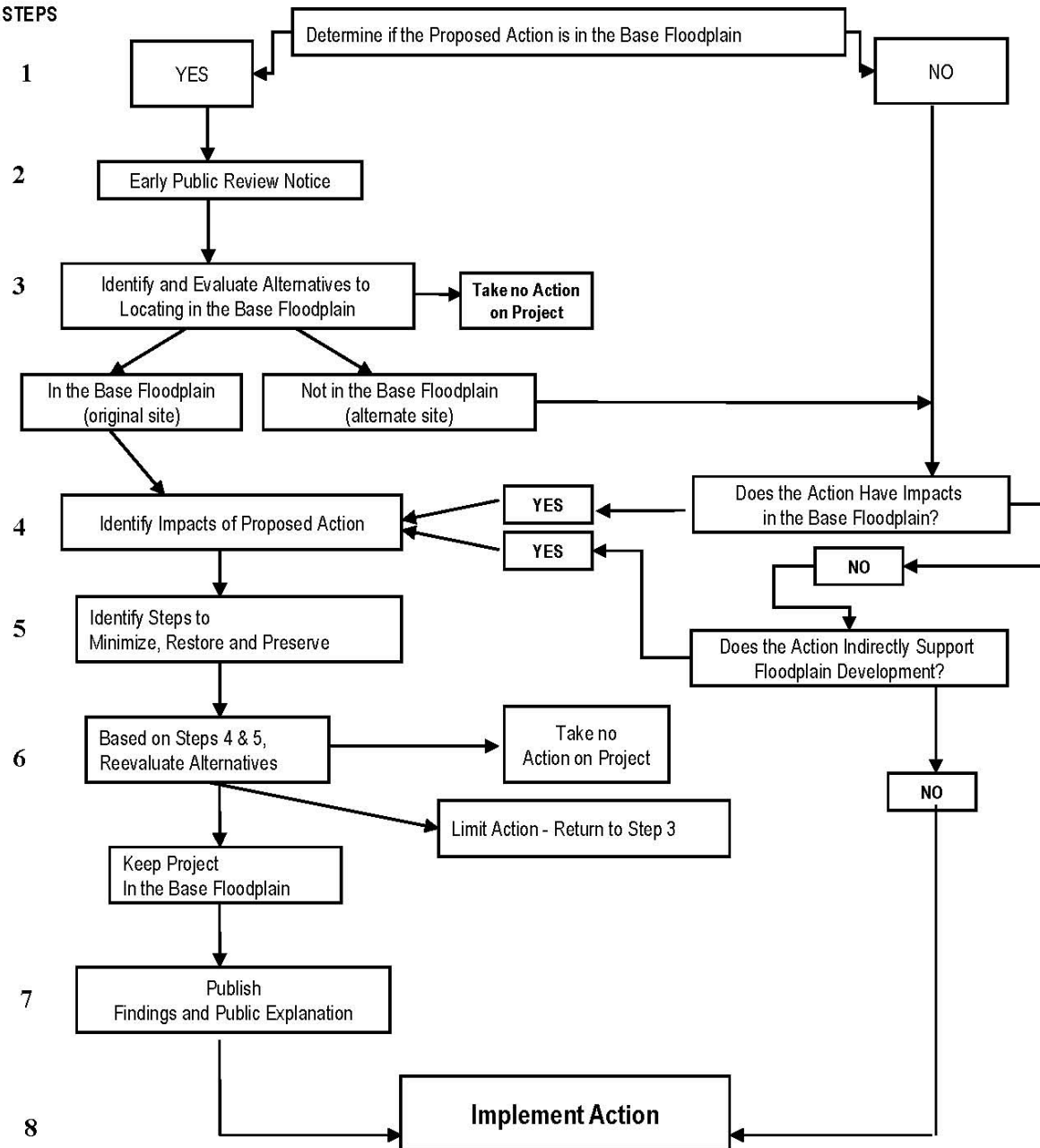
### ❖ Status & Documentation:

- A = Project does not involve property acquisition/mgmt/construction/improvements in 100-yr floodplain or critical action in 500-year floodplain
  - Attach FIRM
- B = Project does involve property acquisition/mgmt/construction/improvements in 100-yr floodplain or critical action in 500-year floodplain
  - 8-Step process must be completed



# Decision Making Process for E.O. 11988

## STEPS



For Critical Action, Substitute "500 Year" for "Base"



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# 8-Step Process

## Floodplains and Wetlands

1. Determine if in/impact on floodplain (as per previous)
2. Publish Notice of Early Public Review as soon as it is determined that project in/have impact on floodplain
3. Identify & evaluate alternatives (other sites/means to accomplish purpose or take no action)
4. ID impacts of proposed action
5. ID steps to minimize/restore & preserve (i.e., mitigation)
6. Re-evaluate alternatives
7. Publish Statement of Finding and Public Explanation
8. Implement action



# FEMA Notification

## CDBG Policy Guidance Policy 10-01

- ❖ The Regional FEMA Office has asked to be contacted anytime an 8-step process has been triggered **for floodplains only**
- ❖ Copy of the 2 notices must be forwarded to the FEMA Regional Environmental Officer for comment & documented in the ERR

# Additional Floodplain Requirements

- ❖ Permit must be obtained from local floodplain administrator prior to constructing any development in 100-yr floodplain
- ❖ Flood insurance must be purchased for any structures located in 100-yr floodplain



# Wetland Protection

## [E.O. 11990]

❖ **Requirement**: If proposed activity will result in construction of new structures or grading/filling activities in wetland, E.O. 11990 triggered

❖ **Process**:

- Must determine presence or absence of wetlands (incl. non-jurisdictional wetlands)
  - Use Request for Wetlands Determination form & Wetlands ID Procedures
  - Natl Wetland Inventory Map **required but** alone not sufficient **(for jurisdictional wetlands?)**





# Wetland Protection [E.O. 11990]

## ❖ Status & Documentation:

- A = Project does not involve construction in wetland
  - Attach documentation verifying this
- B = Project does involve construction in wetland
  - **8-Step process must be completed**
    - Same process as previously described under Floodplain
  - Filling of wetlands may require prior authorization from Corps and SCDHEC - BOW

# Coastal Zone Management Act [Section 307(c) & (d) and 15 CFR Part 930]

## ❖ Requirement:

- Coastal Zone Management (CZM) applies to new construction/conversion/major rehabilitation & substantial improvement activities in coastal areas

## ❖ Process:

- ONLY the 8 Coastal Counties (list in manual/online) are required to obtain Determinations of Consistency from SCDHEC OCCRM

## ❖ Status & Documentation:

- A = Project not in 1 of the 8 coastal counties
- B = Project is in 1 of 8 coastal counties
  - Determination of consistency must be secured from DHEC & att. to the checklist



# Sole Source Aquifers [40 CFR 149]

- ❖ There are no sole source aquifers in South Carolina!
- ❖ Use “A” in status column & indicate “N/A – no sole source aquifers in SC” in the compliance documentation column

# Endangered Species Act [50 CFR 402]

## ❖ Requirement:

- No disturbance of listed or proposed endangered or threatened species or critical habitats allowed

## ❖ Process:

- If project will result in ground disturbance, vegetation removal, filling of ponds/streams/other waters or generation of atypical noise levels, must contact US Fish & Wildlife Service (sample letter in manual)
  - Att. copy of map showing exact location of project; portion of USGS quad sheet showing location of project; photos of vegetation groupings & waterways; and site coordinates



# Endangered Species Act [50 CFR 402]

## ❖ **Status & Documentation:**

- A = Project will have no effect OR is not likely to adversely effect any threatened/endangered species OR project will not adversely modify any species critical habitat. Must be based on:
  - Correspondence with USFWS or National Marine Fisheries Service (NMFS)
  - Results of visit by competent biologist or botanist
  - OR blanket concurrent letter for certain projects
    - Repair, replacement and/or renovation of existing water treatment facilities under certain conditions
    - Water & sewer projects utilizing trenchless technology to upgrade existing pipelines where there is no surface or subsurface excavation

# Endangered Species Act [50 CFR 402]

## ❖ Status & Documentation (cont):

- B = Project is likely to have adverse effect or will adversely modify species critical habitat or project is major construction activity
  - Triggers Section 7 consultation with USFWS or NMFS to resolve or mitigate adverse effects
    - Att. copy of correspondence, findings & approved mitigation measures

# Wild and Scenic Rivers Act [Sections 7(b) & (c)]

## ❖ Requirement:

- Covers impact of new construction & acquisition of undeveloped land in areas within 1 mile of a listed wild & scenic river — **Chatooga is only SC Wild and Scenic River**

## ❖ Process:

- Determine if county in which project located has a listed Wild and Scenic River or is in a River Basin (see manual)
  - If so, consult with Natl Park Service or USFWS to resolve & mitigate effects

## ❖ Status & Documentation:

- A = Project is not located within 1 mile of listed river or will have no effect on the river
- B = Project is located within 1 mile of listed river or will have effect on the river
  - Att. documentation of consultation & resolution or mitigation of effects

# Clean Air Act

## [Sections 176(c) & (d)]

### ❖ Requirement:

- The Clean Air Act prohibits federal assistance to projects that are not in conformance with State Implementation Plan (SIP)
  - SC Bureau of Air Quality (SCBAQ) is lead agency for enforcing federal laws & regulations dealing with outdoor air pollution in SC

### ❖ Process:

- Air quality permits required for certain projects (refer to Statutory Worksheet Guidance from HUD)

### ❖ Status & Documentation:

- A = Project does not require a permit, emissions are de minimis & exempt and project does not require NESHAP permit
- B = Project does require a permit, emissions are not de minimis & exempt or the project requires NESHAP permit
  - Obtain the permit & implement any mitigation measures required



# Farmland Protection Policy Act [7 CFR 658]

## ❖ Requirement:

- Construction of utilities, roads or structures on undeveloped land must comply with the requirements of the Farmland Protection Policy Act of 1981
  - Certain urbanized areas exempt (see Statutory Checklist Guidance)

## ❖ Process:

- Refer to the Statutory Checklist Guidance (various maps available)
- Consult with Natural Resources Conservation Service (NRCS)

## ❖ Status & Documentation:

- A = Project site located within urbanized area/urban area/urban built up area OR consultation with NRCS indicates the site is NOT prime/unique farmland
- B = Site is considered prime/unique farmland
  - Must request valuation of land type from NRCS, consider rating & implement mitigation measures

# Noise Abatement and Control

## [24 CFR 51 Subpart B]

### ❖ Requirement:

- Refers to sources of noise that may effect the project
- New construction/substantial rehab of housing, schools/learning centers or libraries are among noise sensitive activities

### ❖ Process:

- Determine if project activities will be located:
  - Within 1,000 feet of a major or arterial roadway;
  - 3,000 feet of an operating railroad; or
  - Within 5 miles of a civil or 15 miles of a military airport
- If so, **must complete a noise study** (in accordance with the Noise Guidebook)
  - Will require collection of data from various sources (e.g., traffic volume ) and calculations

# Noise Abatement and Control [24 CFR 51B]

## ❖ Status & Documentation:

- A = Project is not located within certain proximity of noise generator (see previous slide) OR it is but noise level below 65 decibels **OR is not a noise sensitive activity**
- B = Project is located within certain proximity of noise generator & noise level higher than 65 decibels
  - If noise level between 65-75 decibels, mitigation/attenuation measures required
  - If noise level higher than 75 decibels, EIS may be required



# Explosive & Flammable Operations [24 CFR 51 Subpart C]

## ❖ Requirement:

- Properties that are located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature are subject to HUD safety standards (24 CFR 51, Subpart C)

## ❖ Process:

- Determine from qualified data source that property is not located within the immediate vicinity of hazardous industrial operations handling fuel/chemicals of explosive or flammable nature & will not expose people or buildings to explosive hazards
  - 100+ gallon above ground storage tanks
  - Other explosive facilities
- Conduct site visit, consult maps & photos, contact local fire/emergency dept.
- If presence of hazard, must calculate acceptable separation distance (ASD)



# Explosive and Flammable Operations [24 CFR 51C]

## ❖ Status & Documentation:

- A = Project is located at an acceptable ASD from aboveground storage facilities as per HUD guidelines OR the project will not expose people or buildings to explosive hazards
- B = Project is NOT located at an acceptable ASD from aboveground storage facilities as per HUD guidelines. Must mitigate (att. specs for construction barrier) or reject the project.

# Airport Hazards

## [24 CFR 51 Subpart D]

### ❖ Requirement:

- Sites for new construction or major rehab activities must be located outside of Runway Clear Zone (RCZ), Clear Zone (CZ) (civil and military airports) or Accident Potential Zone (APZ) (military airports) for a project to be frequently used or occupied by people

# Airport Hazards

## [24 CFR 51 Subpart D]

### ❖ Process:

- Determine if project site is located within 3,000 feet of a civil airport or within 2.5 miles of a military airfield
- If yes, contact the airport/military to determine if the project is located within the Runway Clearzone or Protection Zone or Accident Potential Zone (maps are available)

### ❖ Status & Documentation:

- A = Project is NOT located within a RCZ/CZ/APZ OR involves activity that will not make land available for construction, prolong facility life, change facility use, increase human occupancy or use, or introduce flammable/explosive/toxic materials OR the project involves only the sale or purchase of an existing property in the RCZ or CZ

# Airport Hazards

## [24 CFR 51 Subpart D]

### ❖ Status & Documentation (cont):

- B = Project is located within a RCZ/CZ/APZ OR involves activity that will make land available for construction, prolong facility life, change facility use, increase human occupancy or use, or introduce flammable/explosive/toxic materials
  - HUD policy is to NOT provide any development assistance/subsidy in RCZs or CZs *unless* the project will not be frequently used or occupied by people & the airport operator provides written assurance that there are no plans to purchase the project site
  - IF HUD assistance is provided, notice must be provided to the buyer that the property is in RCZ/CZ
  - Projects in APZs must be consistent with Land Use Compatibility Guidelines @ 32 CFR Part 265



# Toxic Chemicals & Radioactive Materials

[24 CFR 58.5(i)(ii)]

## ❖ Requirement:

- Project sites must be free of hazardous materials that could affect occupant health and safety or restrict property usage

## ❖ Process:

- Check EPA & DHEC sites for recorded contaminated sites
- Historic uses of the property & adjacent properties must be determined for projects involving multifamily housing with 5+ dwelling units or non-residential properties
  - Phase 1 environmental may satisfy this requirement
- Particular attention should be given to nearby dumps, landfills, industrial sites, and other operations with hazardous wastes

# Toxic Chemicals & Radioactive Materials

[24 CFR 58.5(i)(ii)]

## ❖ Process (cont):

- If investigation deemed necessary, must be conducted by qualified professional using current techniques
- If toxics/hazards ID'd, further assessment incl. completion of additional records review & sampling may be required

## ❖ Status & Documentation:

- A = Subject & adjacent properties are NOT affected by hazardous materials/contamination/toxic chemicals, etc.
- B = Subject & adjacent properties is affected by hazardous materials/contamination/toxic chemicals etc.
  - Mitigate condition by removal/stabilizing/encapsulating toxic substances in accordance with Fed/State/local guidelines or reject project



# Environmental Justice [Executive Order 12898]

## ❖ Requirement:

- Applies to low-income or minority neighborhoods where the HUD assisted project proposes the acquisition of existing housing, the acquisition of land for development, and new construction
- Determine if the proposed site or neighborhood suffers from disproportionate adverse health and environmental effects relative to the community at large

# Environmental Justice [Executive Order 12898]

## ❖ Process:

- Assess whether the project is likely to create adverse environmental conditions (such as toxic pollutants, hazardous industrial operations, foul odor producing operations or high automobile or train traffic hazards) that may have disproportional effects on low income or minority populations
- See HUD's website for more EJ Guidance and Technical Assistance information:
  - <http://www.hud.gov/offices/cpd/environment/review/justice.cfm>



# Environmental Justice [Executive Order 12898]

## ❖ Status & Documentation:

- A = Project site will not be impacted by harmful environmental conditions having a disproportional impact on low income or minority populations
- B = Project site will be impacted by harmful environmental conditions having a disproportional impact on low income or minority populations
  - Address & mitigate the effects or reject project



# Energy (Energy Star Product Utilization)

- ❖ Requirement: **Need to complete**
- ❖ Process:
- ❖ Status & Documentation:

# Completing the Process for CE Subject to Activities

- ❖ Once checklist has been completed, make determination:
    - Converts to exempt - does not require any mitigation for compliance with any listed statutes or authorities (i.e., status “A” has been determined for all statutes/authorities)
      - Complete the E1 & submit to GA
    - Remains as categorically excluded subject to 58.5 – cannot convert to exempt b/c 1 or more statutes/authorities require **mitigation**
      - Publish Notice of Intent (NOI) to Request Release of Funds (RROF)
      - Send NOI/RROF to agency contact list & other interested parties
      - Send RROF & Certification to GA
- OR
- Requires an environmental assessment



# Environmental Assessments

- ❖ If project not Exempt or Categorically Excluded, an Environmental Assessment (EA) required
- ❖ Examples of types of projects:
  - Acquisition, **construction** or rehab of public facilities other than buildings with more than 20% increase in capacity
  - Rehab & improvement of multifamily dwellings IF unit density increases more than 20% or changes to non-residential use or the est. cost of rehab is less than 75% of replacement cost





# Completing an EA

- ❖ Requires completion of Modified Format II - EA

## Modified Environmental Assessment

for HUD-funded Proposals

*Recommended format per 24 CFR 58.36, revised March 2005,  
modified December 2007*

*[Previously recommended EA formats are obsolete]*



Project Identification: \_\_\_\_\_

Preparer: \_\_\_\_\_

Responsible Entity: \_\_\_\_\_

Month/Year: \_\_\_\_\_ , \_\_\_\_\_

# Completing an EA

- ❖ Complete the first part of the Format II (pgs 1-2)
  - Contact Info.
  - Project name, location, cost
  - Statement of purpose & Need for proposal
    - Explain purpose of the project & why needed (likely in CDBG application)
  - Description of proposal
    - Incl. all activities that are contemplated as part of project (all funding sources)
  - Existing conditions & trends
    - Describe the conditions of the area & trends likely to continue in absence of project
  - Maps & other reference info. should be attached
- ❖ Complete the “Finding” and signature sections after review complete (more later)

# Completing an EA

- ❖ Complete the Statutory Checklist
- ❖ See previous slides for CE Subject to 58.5 Activities
  - However, no “A” or “B” Status on Format II
  - Record determination
  - Include source docs (reviews/consultation), dates of contact, compliance docs & conditions or mitigation measures required
  - Attach documents for each area

## Statutory Checklist

[24CFR §58.5]

Record the determinations made regarding each listed statute, executive order or regulation. Provide appropriate source documentation. [Note reviews or consultations completed as well as any applicable permits or approvals obtained or required. Note dates of contact or page references]. Provide compliance or consistency documentation. Attach additional material as appropriate. Note conditions, attenuation or mitigation measures required.

Factors	Determination and Compliance Documentation
<b>Historic Preservation</b> [36 CFR 800]	
<b>Floodplain Management</b> [24 CFR 55, Executive Order 11988]	
<b>Wetlands Protection</b> [Executive Order 11990]	
<b>Coastal Zone Management Act</b> [Sections 307(c),(d)]	
<b>Sole Source Aquifers</b> [40 CFR 145]	Sole source aquifers are not present in SC (see <a href="http://www.epa.gov/safewater/swp/ssa/reg4.html">www.epa.gov/safewater/swp/ssa/reg4.html</a> ). No further action required.
<b>Endangered Species Act</b> [50 CFR 402]	
<b>Wild and Scenic Rivers Act</b> [Sections 7 (b), (c)]	
<b>Air Quality</b> [Clean Air Act, Sections 176 (c) and (d), and 40 CFR 6, 51, 93]	
<b>Farmland Protection Policy Act</b> [7 CFR 658]	
<b>Environmental Justice</b> [Executive Order 12898]	

## HUD Environmental Standards Determination and Compliance Documentation

<b>Noise Abatement and Control</b> [24 CFR 51.3]	
<b>Toxic/Hazardous/Radioactive Materials, Contamination, Chemicals or Gases</b> [24 CFR 58.5(f)(2)]	
<b>Siting of HUD-Assisted Projects near Hazardous Operations</b> [24 CFR 51.C]	
<b>Airport Clear Zones and Accident Potential Zones</b> [24 CFR 51.D]	

# Completing an EA

## ❖ Complete “Other Statutes” Checklist

### ▪ Federal Authorities:

- Clean Water Act
  - Activities that cause loss of any jurisdictional wetlands/streams/open waters may require prior authorization from USACE & SCDHEC-BOW
  - Construction activities that disturb 1+ acres of land may require pollution discharge permit (SCDHEC)
  - Construction of wastewater treatment facilities or other point source dischargers require permit & approval from DHEC
- Resource Conservation & Recovery Act
  - If project creates hazardous waste, contact SC Bureau of Land & Waste Management for proper tracking & disposal methods
- Fish & Wildlife Coordination Act
  - If activity will result in impounding, diverting, deepening, channelizing or modification of stream/other body of water, consultation with USFWS & SCDNR required





# Completing an EA

- ❖ State & Local Statutes (Not all Inclusive – Others may Apply)
  - Stormwater & sedimentation
    - Land disturbances 2+ acres require stormwater mgmt & sediment control plan form SCDHEC district office
  - Ground water use permitting
    - Certain activities in designated capacity areas require public notification & permits
  - Drinking water protection
    - Modification of existing or new public water supply systems requires permit from SCDHEC



# Completing an EA

- ❖ Complete the EA Checklist
- ❖ Evaluate effects of project on character, features & resources of the project area
  - Include verifiable source documentation to support the finding
  - Then, determine & enter the appropriate impact code

## Environmental Assessment Checklist

[Environmental Review Guide HUD CPD 782, 24 CFR 58.40; Ref. 40 CFR 1508.8 & 1508.27]

Evaluate the significance of the effects of the proposal on the character, features and resources of the project area. Enter relevant base data and verifiable source documentation to support the finding. Then enter the appropriate impact code from the following list to make a determination of impact. **Impact Codes:** (1) - No impact anticipated; (2) - Potentially beneficial; (3) - Potentially adverse; (4) - Requires mitigation; (5) - Requires project modification. Note names, dates of contact, telephone numbers and page references. Attach additional material as appropriate. Note conditions or mitigation measures required.

Land Development	Code	Source or Documentation
Conformance with Comprehensive Plans and Zoning		
Compatibility and Urban Impact		
Slope		
Erosion		
Soil Suitability		
Hazards and Nuisances including Site Safety		
Energy Consumption		
Noise - Contribution to Community Noise Levels		
Air Quality Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels		
Environmental Design Visual Quality - Coherence, Diversity, Compatible Use and Scale		



# Completing an EA

## ❖ To support each finding, must use:

- Relevant base data & verifiable source documents
- Authorities & experts
- Site observations OR
- Consultations with local agencies to determine if local services available & how services will be affected by project -- for example, to assess:
  - Water supply/sanitary sewers/solid waste disposal, contact local public works department
  - School services, contact local school board

## ❖ Use “Certification Forms for Recording Local Resource & Social Agency Comments/Analyses” in CDBG manual

- Always note names, dates of contact, telephone numbers & page references of documents

# Completing an EA

## ❖ Impact Codes:

1. No impact anticipated: no additional analysis or mitigation efforts needed
2. Potentially beneficial: anticipated beneficial impacts
3. Potentially adverse: impacts may be so small as to not require further study or standard mitigation procedures have been established (e.g., plan must be submitted & mitigation measures installed)
4. Requires mitigation: impact in question should be subject to further review & study (e.g., consultation with experts)
5. Requires project modification: impact is adverse & requires mitigation for impacts or project modification (e.g., project needs to be redesigned)





# Completing an EA

## ❖ Areas for review:

- Land development
- Noise
- Air quality
- Environmental design
- Socioeconomic
- Community facilities & services
- Natural features
- Other factors
  - Flood insurance
  - Coastal Barriers Resources
  - Airport Clear Zones
  - Others



# Completing an EA

## ❖ Summary of Findings & Conclusions

- Must discuss other reasonable courses of action that were considered & not selected
- Discuss benefits & adverse impacts of not implementing the project
- Recommend feasible ways the project or external factors should be modified to minimize adverse enviro impacts
- Reference & att. studies or summaries
- List sources, agencies & persons consulted



# Completing an EA

- ❖ Once review complete, go back to page 2 & indicate if:
  - Finding of No Significant Impact
  - Finding of Significant Impact
- ❖ Preparer signs & certifying officer/approving official signs
  - Must be signed prior to publication/posting Notice of Finding of No Significant Impact (FONSI)

# Completing an EA

## ❖ If Finding of No Significant Impact:

- Publish/post “Combined Notice of Finding of No Significant Impact (FONSI)/Notice of Intent to Request for Release of Funds (NOIRROF)”
  - 15-day public comment period; 18-days if posted
- Put documentation in ERR
- Submit required information to GA (15 day comment period at State level after receipt of info.)
- Proceed with project only after receipt of NOREC received from the State If significant impact, have to prepare EIS





# Exempt Activities

- ❖ Activity is exempt when there is no effect on the environment
  - Studies, plans, and engineering costs
  - Public service activities with no physical impact
  - Development of codes, ordinances and regulations necessary for the implementation of the program
  - Eligible administrative costs

# What steps do you take?

- Document that the activity is exempt by completing & submitting the **Determination of Exemption E-1 Form**
- Move forward with the activity

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**DETERMINATION OF EXEMPTION  
(24 CFR 58.34)  
E1  
Enter Date**

---

Grantee: \_\_\_\_\_ Grant No. \_\_\_\_\_

I hereby certify that the following activities comprising the \_\_\_\_\_ Project have been reviewed and determined to be an Exempt Activity per 24 CFR 58.34 (a) as follows:

- ☐ (1) Environmental and other studies, resource identification and the development of plans and strategies;
- ☐ (2) Information and financial services;
- ☐ (3) Administrative and management activities;
- ☐ (4) Public services that will not have a physical impact or result in any physical change, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- ☐ (5) Inspections and testing of properties for hazards or defects;
- ☐ (6) Purchase of insurance;
- ☐ (7) Purchase of tools;
- ☐ (8) Engineering or design costs;
- ☐ (9) Technical assistance and training;
- ☐ (10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters, imminent threats or physical deterioration;
- ☐ (11) Payment of principal and interest on loans made or obligations guaranteed by HUD;
- ☐ (12) Any of the categorical exclusions listed in 58.35 (a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in 58.5.

In accordance with 24 CFR 58.34 (b), no further environmental approval form from HUD or the State is necessary for the drawdown of funds to implement this program.

\_\_\_\_\_  
Name and Title of Certifying Officer

\_\_\_\_\_  
Signature of Certifying Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Person Preparing this form

\_\_\_\_\_  
Phone Number

For State Use Only	Reviewed	Date
Compliance Specialist		

# Categorically Excluded Activities

- ❖ Categorically Excluded means excluded from NEPA requirements
- ❖ Some activities still subject to some parts of HUD regs at 24 CFR 58.5 while others are not
  - Referred to as “Subject To” or “Not Subject To”



# Categorically Excluded 'Not Subject To' Activities

- ❖ “NOT Subject To” activities include:
  - Operating costs or supportive services
  - Direct assistance to homebuyers for existing housing or housing under construction
  - Predevelopment costs with no physical impact



# What steps do you take?

## ❖ 'NOT Subject To' 58.5:

- Document that activities not in Runway Clear Zone or on Coastal Barrier Island
- Complete & submit **Categorical Exclusion (not subject to 58.5) GA E2-A Form**
- Proceed with the activity

11/09

**CATEGORICAL EXCLUSION (not subject to 58.5)**  
**24 CFR 58.35 (b)**  
**Grants Administration E2-A**

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Grantee: \_\_\_\_\_ Grant Number: \_\_\_\_\_

I hereby certify that the following activities comprising the \_\_\_\_\_ Project have been reviewed and determined to be Categorically Excluded per 24 CFR 58.35 (b) as follows:

☐ (1) Tenant-based rental assistance;

☐ (2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, Federal government benefits and services;

☐ (3) Operation costs, including but not limited to, equipment purchases, inventory financing, interest subsidy, operation expenses, and similar costs not associated with construction or expansion of existing operations;

☐ (4) Economic development activities, including but not limited to, equipment purchases, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

☐ (5) Activities to assist home ownership of existing dwelling units including closing costs and down payment assistance to home buyers, and similar activities that result in the transfer of title to a property;

☐ (6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

I hereby also certify that the activities will not be located in:

☐ (1) A runway clear zone

☐ (2) Coastal barrier island

\_\_\_\_\_  
Name and Title of Certifying Officer

\_\_\_\_\_  
Signature of Certifying Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Person Preparing this form

\_\_\_\_\_  
Phone Number

For State Use Only	Reviewed	Date
Compliance Specialist		

# Project Aggregation

- ❖ Must group together & evaluate as a single project all individual activities that are related on a geographical or functional basis or are logical parts of a larger set of activities
  - Functional Aggregation (by type of activity)
  - Geographic Aggregation (by area)
- ❖ Grantees encouraged to do ERRs based on target areas/neighborhoods and include phased improvements & potential activities that may take place in the future



# Tiering

- ❖ Tiering (or unspecified site strategy) allows for review of broad enviro impacts at early stage of project & site-specific impacts when sites are ID'd

Broad Review of Known Conditions for Type of Project & Area with Strategy for Reviewing Sites for Unknown Conditions when Identified

Site Specific  
Reviews

Site Specific  
Reviews

Site Specific  
Reviews

Site Specific  
Reviews



South Carolina  
Commerce

# Tiering cont.

## ❖ Tiered review must contain:

- Appropriate form for level of review (e.g., Statutory Checklist or Format II EA)
  - If some factors not known, must indicate such & how will be addressed when sites known
- Written strategy explaining how unknown factors will be handled when sites identified
- When sites are known, the site specific review checklist addressing factors that were not known when review previously completed
  - Consistent with written strategy
- Request for Release of Funds (RROF)





# Updates to ERRs

- ❖ If the size, **location** or scope of the project changes significantly, project's environmental impact must be re-assessed & update the ERR to reconfirm original finding
  - Examples:
    - Adding new activities not covered in original project scope
    - New circumstances & environmental conditions that may affect the project
    - Choosing an alternative approach or site not considered in the original assessment

# Updates to ERRs Cont.

- ❖ If the recipient determines that the original Finding of No Significant Impact (FONSI) is no longer valid
  - Recipient must notify GA and prepare a new EA
- ❖ Re-evaluation documentation must be submitted to GA
- ❖ Funds cannot be released unless the new decision is documented and reported

# Notices



- ❖ Notices must be complete – adequately describe project, location, etc.
- ❖ Publish notices in newspaper of general circulation or post in prominent public places
  - NOTE: 8-Step floodplain/wetland notices must be published -- no posting allowed
- ❖ Send copies of notices to agencies on the contact list & other interested parties
- ❖ Timing: “clock” begins 12:01 a.m. day after the notice is published
  - Local comment period + State comment period begins day after state RECEIVES paperwork



# Timing of Notices

Notice	Method	Timing
FONSI	Published	15 days
FONSI	Posted	18 days
NOI/RROF	Published	7 days local + 15 days for @ state
NOI/RROF	Posted	10 days + 15 days for state
Combined FONSI & NOI/RROF	Published	15 days @ local for comment + 15 days @ state for objections
Floodplain Notice of Early Public Review	Published (required)	15 days
Floodplain Statement of Findings & Public Explanation	Published (required)	15 days





# Resources

## ❖ SC CDBG Implementation Manual: Ch 2

- Forms for Ch 2: <http://sccommerce.com/cdbg-forms-and-documents>

## ❖ HUD's Environmental Guidance: SC

- <http://www.hud.gov/local/shared/working/r4/environment/guidancesc.cfm?state=sc#10>

## ❖ HUD's Assessment Tools for Environmental Compliance

- <http://www.hud.gov/offices/cpd/environment/atec.cfm>



# Wrap Up

- ❖ Questions?
- ❖ Resources Needed?

# Thanks for coming!



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